

IN THE
Supreme Court of the United States

PDVSA U.S. LITIGATION TRUST, *et al.*,

Petitioners,

v.

LUKOIL PAN AMERICAS LLC, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF PETITION FOR CERTIORARI**

GEORGE F. CARPINELLO
BOIES SCHILLER FLEXNER LLP
30 S. Pearl Street, 11th Floor
Albany, NY 12207

MARSHALL DORE LOUIS
BOIES SCHILLER FLEXNER LLP
Miami Center
100 Southeast Second St.,
Suite 2800
Miami, FL 33131

DAVID BOIES
Counsel of Record
BROOKE ALEXANDER
BOIES SCHILLER FLEXNER LLP
333 Main Street
Armonk, NY 10504
(914) 749-8200
dboies@bsflp.com

DAVID A. BARRETT
WALESKA SUERO GARCIA
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards
New York, NY 10001

Counsel for Petitioners

INTRODUCTION

Per Supreme Court Rule 15.8, Petitioners respectfully submit this supplemental memorandum in support of their petition for certiorari (“Petition”) to inform the Court of pertinent and significant recent developments.

I. A RECENT CHANGE IN THE EXECUTIVE BRANCH’S POSITION ON VENEZUELA CAN CURE A LACK OF SUBJECT-MATTER JURISDICTION.

Consistent with Petitioners’ position that a change in the Executive Branch’s position can cure a lack of subject matter jurisdiction, the Biden administration recently brokered a deal to lift all sanctions on PDVSA in exchange for free and fair elections in Venezuela next year.

On October 17, 2023, after months of failed negotiations, the Maduro administration and Venezuelan opposition finally reached an agreement, titled “Partial Agreement on the Promotion of Political Rights and Electoral Guarantees for All,”¹ regarding the conditions for Venezuela’s 2024 presidential election. President Maduro committed to, among other conditions, “lifting bans on opposition candidates running”² and “allow[ing]

1. José Luis Granados Ceja and Ricardo Vaz, *Venezuelan Gov’t, Opposition Resume Dialogue, Establish Electoral Conditions*, Venezuelanalysis (Oct. 17, 2023), <https://venezuelanalysis.com/news/venezuelan-government-opposition-dialogue/>.

2. Samantha Schmidt, et al., *U.S. to ease sanctions on Venezuelan oil for freer presidential election*, THE WASHINGTON POST (Oct. 16, 2023), <https://www.washingtonpost.com/world/2023/10/16/venezuela-us-sanctions-deal/>.

a competitive, internationally monitored presidential election next year.”³ In a second agreement, titled “Partial Agreement for the Protection of the Nation’s Vital Interests,” the two Venezuelan factions agreed to “defend the assets and property of . . . Citgo Petroleum Corporation to preserve the vital interests and patrimony of the people of Venezuela.”⁴ The deal was reached in Barbados with United States officials present,⁵ and has been heralded as a “significant policy shift” and “sharp break from recent U.S. policy towards Venezuela.”⁶ A joint statement from foreign affairs representatives of the United States, European Union, Canada, and the United Kingdom on the Venezuelan negotiations indicated that “[t]his agreement represents a necessary step in the continuation of an inclusive dialogue process and the restoration of democracy in Venezuela.”⁷

In exchange for President Maduro’s commitment to freer and fairer elections, the Biden administration agreed to lift sanctions on Venezuela’s oil industry, which

3. *See supra* n.2.

4. *See supra* n.1.

5. *See supra* n.2.

6. Julio Ricardo Varela, *Biden’s new Venezuela deal is a big win — and a big repudiation of Trump*, MSNBC (Oct. 17, 2023), <https://www.msnbc.com/opinion/msnbc-opinion/venezuela-biden-election-deal-oil-sanctions-rcna120610>.

7. Joint Statement on Venezuela Negotiations, U.S. DEP’T OF STATE (Oct. 17, 2023), <https://www.state.gov/joint-statement-on-venezuela-negotiations-3/>.

is controlled by President Maduro.^{8,9} On October 18, 2023, the United States Treasury Department issued a “six-month general license temporarily authorizing transactions involving the oil and gas sector in Venezuela” and “[a]mended two relevant licenses to remove the secondary trading ban on certain Venezuelan sovereign bonds and [PDVSA] debt and equity.”¹⁰ *See* App’x. The Biden administration further agreed to renew the license “if Venezuela meets its commitments under the electoral roadmap as well as other commitments with respect to those who are wrongfully detained.”¹¹ The license authorizes “[p]roduction, lifting, sale, and exportation of oil or gas from Venezuela,” “[p]ayment of invoices for goods or services related to oil or gas sector operations in Venezuela,” “[n]ew investment in oil or gas sector operations,” and “[d]elivery of oil and gas from Venezuela to creditors of the Government of Venezuela, including creditors of [PDVSA] entities, for the purpose of debt repayment.”¹²

With this recent turn of events, it is all the more reasonable that the Executive Branch would support the *de facto*, Maduro-controlled PDVSA board as the real party in interest to proceed in this litigation. *See* Petitioners’

8. *See supra* n.2.

9. *See supra* n.1.

10. *In Response to Electoral Roadmap, Treasury Issues New Venezuela General Licenses*, U.S. DEP’T OF THE TREASURY (Oct. 18, 2023), <https://home.treasury.gov/news/press-releases/jy1822>.

11. *See supra* n.10.

12. General License No. 44, U.S. DEP’T OF THE TREASURY (Oct. 18, 2023), <https://ofac.treasury.gov/media/932231/download?inline>.

Reply Brief, Oct. 5, 2023, at 10. Notwithstanding any official position taken, the Executive Branch continues to engage with the Maduro government. *See* Reply Br. 9-10. The Biden administration’s decision to suspend economic sanctions on PDVSA further reinforces Petitioners’ position that the Executive Branch “would support prosecution of this litigation by the Maduro *de facto* PDVSA board in order to seek recovery of billions of dollars stolen by Defendants.” Reply Br. 10. Additionally, the lifting of sanctions also indicates that the Executive Branch remains open to giving financial incentives to the Maduro government as a reward for ongoing negotiations with the Venezuelan opposition once at the helm of President Guaidó. *See* Reply Br. 10.

In light of this shift in United States policy on Venezuela, the Court should hold that even if the existence of a political question precludes subject matter jurisdiction, recent events that occur during the pendency of the action can cure any lack of subject matter jurisdiction.

CONCLUSION

For the foregoing reasons and those discussed in the Petition, Certiorari should be granted in this case, or it should be held in abeyance pending determination of the petition in No. 23-140.

Respectfully submitted,

GEORGE F. CARPINELLO
BOIES SCHILLER FLEXNER LLP
30 S. Pearl Street, 11th Floor
Albany, NY 12207

MARSHALL DORE LOUIS
BOIES SCHILLER FLEXNER LLP
Miami Center
100 Southeast Second St.,
Suite 2800
Miami, FL 33131

DAVID BOIES
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BROOKE ALEXANDER
BOIES SCHILLER FLEXNER LLP
333 Main Street
Armonk, NY 10504
(914) 749-8200
dboies@bsflp.com

DAVID A. BARRETT
WALESKA SUERO GARCIA
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards
New York, NY 10001

Counsel for Petitioners

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APPENDIX

**APPENDIX — U.S. DEPARTMENT OF
THE TREASURY PRESS RELEASE**

U.S. DEPARTMENT OF THE TREASURY

**In Response to Electoral Roadmap, Treasury Issues
New Venezuela General Licenses**

October 18, 2023

WASHINGTON – In response to the signing of an electoral roadmap agreement between Venezuela’s Unitary Platform and representatives of Maduro, and in support of the Venezuelan people, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) today issued 4 General Licenses suspending select sanctions.

Under Secretary of the Treasury for Terrorism and Financial Intelligence Brian E. Nelson issued the following statement on the General Licenses:

“The United States welcomes the signing of an electoral roadmap agreement between the Unitary Platform and Maduro representatives. Consistent with U.S. sanctions policy, in response to these democratic developments, the U.S. Department of the Treasury has issued General Licenses authorizing transactions involving Venezuela’s oil and gas sector and gold sector, as well as removing the ban on secondary trading.

Treasury is prepared to amend or revoke authorizations at any time, should representatives of Maduro fail to follow through on their commitments. All other restrictions

Appendix

imposed by the United States on Venezuela remain in place, and we will continue to hold bad actors accountable. We stand with the Venezuelan people and support Venezuelan democracy.”

Treasury today:

- Issued a six-month general license temporarily authorizing transactions involving the oil and gas sector in Venezuela. The license will be renewed only if Venezuela meets its commitments under the electoral roadmap as well as other commitments with respect to those who are wrongfully detained.
- Issued a second general license authorizing dealings with Minerven – the Venezuelan state-owned gold mining company – which Treasury assesses would have the effect of reducing black-market trading in gold.
- Amended two relevant licenses to remove the secondary trading ban on certain Venezuelan sovereign bonds and PdVSA debt and equity. The ban on trading in the primary Venezuelan bond market remains in place. Treasury assesses that this, too, would have the positive effect of displacing nefarious players in this market, and with negligible financial benefit to the Venezuelan regime.

OFAC has also provided several Frequently Asked Questions (FAQs), available [here](#).